

The Honorable Marsha J. Pechman

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**UNITED STATES DISTRICT COURT,  
 WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

AUXIER FINANCIAL GROUP LLC, et. al  
 Plaintiff,  
 vs.  
 JP MORGAN CHASE BANK, N.A.; Bank  
 of America N.A. as Successor by Merger to  
 LASALLE BANK N.A. as TRUSTEE for  
 Washington Mutual Mortgage Pass-through  
 Certificates WaMu Series 2007- OA4 Trust,  
 and as TRUSTEE for Washington Mutual  
 Mortgage Pass-Through Certificates MWALT  
 Series 2007 OC1 Trust.  
 Defendants,

No. 2:10-cv-02070 MJP.

Declaration of Josh Auxier in Support of  
 Plaintiff's Response in Opposition to  
 Defendant's Motion for Summary Judgment

Noted for December 30, 2011

I, Josh Auxier, declare and state the following:

I am the managing member of Plaintiff Auxier Financial Group, LLC, and am  
 authorized to make this declaration on behalf of Auxier Financial Group, LLC. I have first-  
 hand personal knowledge of all facts and statements made in this Declaration. If called as a  
 witness I would be competent to testify to these matters. I make this Declaration in Support of  
 Plaintiff's Response and Opposition to Defendants' Motion for Summary Judgment.

Dec. of Mr. Auxier

~ 1 ~

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**I. Evidence Disputed as to Defendant Chase Bank's claim that it is Holder/Owner of the Promissory Note referenced in the Subject Deed of Trust**

1.1. As of the time of the making of this declaration Plaintiff has received 4 different copies of the Note from the Defendants that is reputed by the Defendants to be part of the purported loan documentation of the loan by Washington Mutual Bank, FA to Joseph Sellars; and thus those four different copies of the Note are now a part of the evidence of who is the owner or holder of the promissory note secured by the deed of trust that is the central subject matter of this lawsuit. The first version of the Note was provided to Plaintiff on October 15<sup>th</sup>, 2009 by and from Washington Mutual Home Loans ("WaMu Home Loan") in response to Plaintiff's request for a copy of the original note. At the time of the request time the Plaintiff (Auxier Financial Group LLC d/b/a International Business Brokers & Associates) had previously cured the prior default of the loan when Plaintiff had acquired the ownership rights in the two real property parcels from Mr. Joseph Sellars and Mr. Greg Greene and their entity known Land Barons LLC d/b/a/ LB Enterprises. That request had been made by Auxier Financial Group LLC because at that time it expected to become responsible for payment on the loan as purchaser of the property that was encumbered by the deed of trust pursuant to the agreement with the sellers; therefore, the buyer needed to know the provisions and terms of the Note. A copy of that first version of the Note is attached hereto marked as **Exhibit A-1** and incorporated herein by reference as if fully set forth here. I personally received this document by fax from the sender, Washington Mutual Home Loans. See page 1 of **Exhibit A-1**. That first version of the note has the following characteristics which can be observed on the face of the document:

- (1) the Note is not indorsed in any manner by anyone at the time this copy was sent to me;

(2) the Note contains a barcode stamp at the top of page 1 of the Note, beneath which is printing that reads "PNOTE" at the time this copy was made and sent to me;

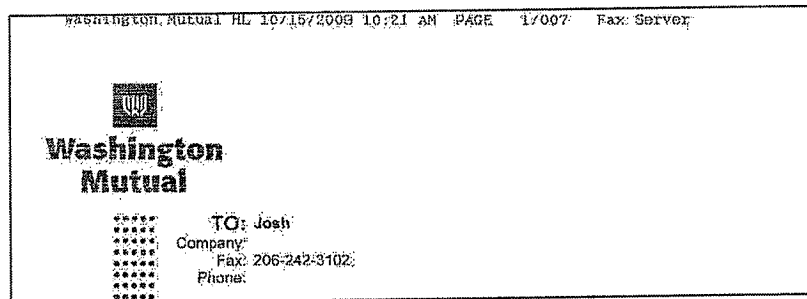
(3) the Note has a handwritten notation at the top of Page 1 that appears to read

"S. Sellars" at the time this copy was made and sent to me;

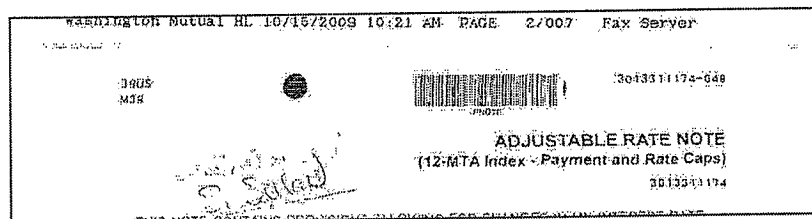
(4) the Note has no redactions at the time this copy was made and sent to me; and

(5) the Note has no other notations or highlights. Excerpts of this version of the Note are as follows:

Page 1 – Showing that version # 1 of the note was sent from Washington Mutual to Josh Auxier at Plaintiff's Fax # on October 15, 2009:



Page 2 – contains a handwritten notation that appears to read "S. Sellars":



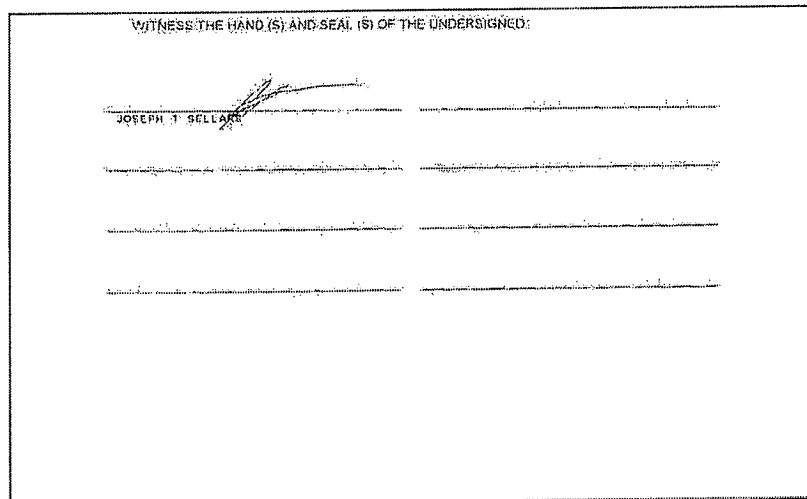
Dec. of Mr. Auxier

~ 3 ~

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1 The signature block with no indorsement, no other notation and no highlights.



9 1.2. The 2<sup>nd</sup>, 3<sup>rd</sup>, & 4<sup>th</sup> versions of the Note were received on a CD from Defendants' legal  
 10 counsel that was part of Defendants' Response to Plaintiff's Requests for Production to  
 11 Defendants. I personally reviewed that entire CD, and made copies of the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup>  
 12 versions of the note from the CD.

13

14 1.3. The 2<sup>nd</sup> version of the note came on the CD from Defendants' counsel with a  
 15 document name and number that reads "AUXIER000487." A copy of this Note is attached  
 16 hereto, marked **Exhibit A-2**, and incorporated herein by reference as if fully set forth here.  
 17 This copy of the Note was (1) not endorsed in blank; (2) contains a barcode stamp at the top of  
 18 page 1 with printing below that reads "PNOTE"; (3) has a handwritten notation that appears  
 19 to read "S. Sellars"; (4) has a partial redaction of the Loan #; and (4) has no other notations or  
 20 highlights. Excerpts of this 2<sup>nd</sup> version of the Note are as follows:

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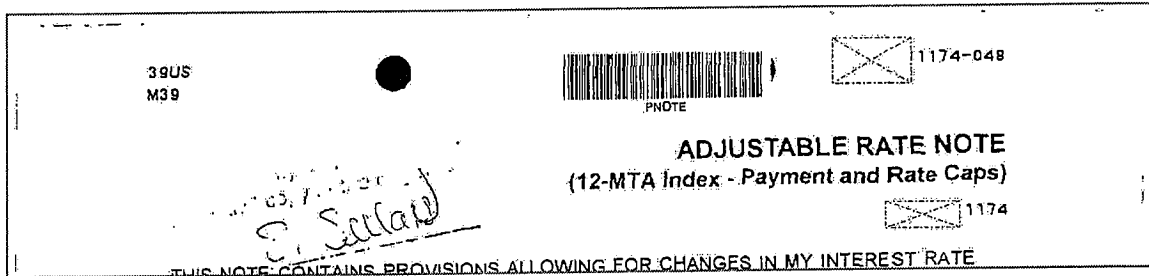
24 Dec. of Mr. Auxier

~ 4 ~

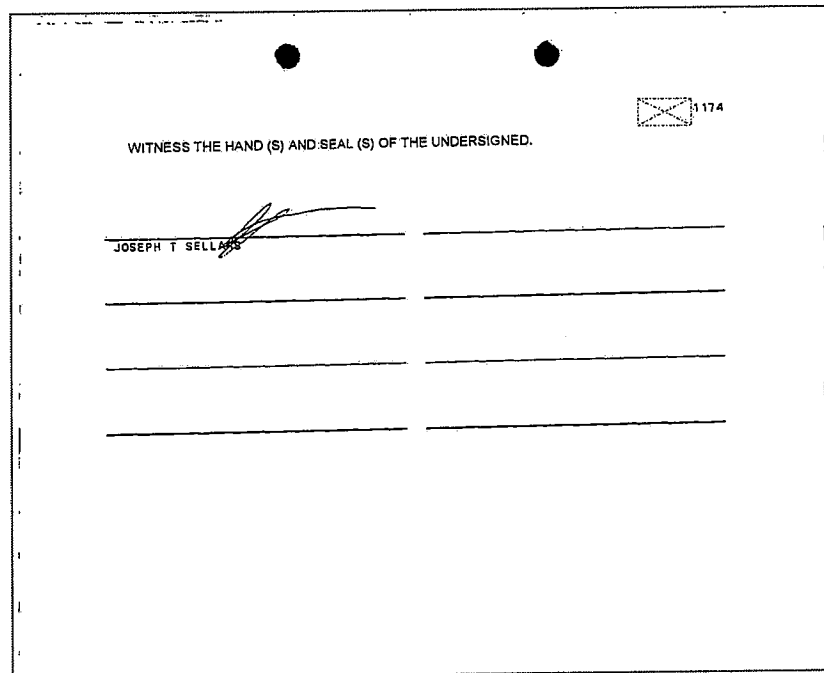
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Page 1 – Barcode “PNOTE”; Partial Redaction; Handwritten “S.Sellars” notation:



The signature block with the partial redaction of the loan #, no indorsement, no addition notation, and no highlights. (Notice how clean and dark the copy and letters are.)



1.4. The 3<sup>rd</sup> version of the note came on the same CD referred to above, with a file name and number of "AUXIER0001542" This copy is (1) purportedly indorsed in blank and the alleged indorsement appears very clear and dark; (2) This copy of the Note does not have a barcode stamp on page 1; (3) This copy of the Note has no handwritten notation on page 1 that reads "S. Sellars"; (4) This copy of the Note has a complete Redaction of the Loan #; (5)

Dec. of Mr. Auxier

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has a notation that reads Exhibit A; and (6) contains an easily identifiable alteration of the printed last name of the signer in the signature block.

1.5. Excerpts of this 3<sup>rd</sup> version of the Note are as follows:

Top of Pg. 1 – Showing no bar code, no handwritten notation of “S. Sellars” and complete redaction of loan #.

39US M39	
<b>ADJUSTABLE RATE NOTE</b> (12-MTA Index - Payment and Rate Caps)	
THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN <u>115%</u> OF THE ORIGINAL AMOUNT (OR \$ <u>342,700.00</u> ). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THIS NOTE OR ANY RIDER TO THIS NOTE. A BALLOON PAYMENT MAY BE DUE AT MATURITY.	
<u>FEBRUARY 22, 2007</u>	<u>EVERETT</u> CITY, <u>WASHINGTON</u> STATE
<u>2525 CENTER RD, EVERETT, WA 98204</u> PROPERTY ADDRESS	

Bottom of Pg 1 – Showing notation added of “Exhibit A”

EXHIBIT A	
CONFIDENTIAL	AUXIER001542

1 The signature block with dark stamp of indorsement and no highlights.

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WITNESS THE HAND (S) AND SEAL (S) OF THE UNDERSIGNED.

JOSEPH T SELLARS

Pay to the order of  
Without Recourse  
WASHINGTON MUTUAL BANK, PA

By CYNTHIA FREY  
VICE PRESIDENT

13 Notice the lowercase typeset of the letter "s"

14 in Sellars on this 3<sup>rd</sup> version of the Note

15 produced in discovery

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JOSEPH T SELLARS

1.6. The 4th version of the Note came on a CD with a file name of "AUXIER0001724"

This copy of the Note is (1) purportedly indorsed in blank although different than in Ver. 3 because this version of the indorsement is quite faded; (2) This copy does not have a barcode stamp, handwritten notation of "S. Sellars," or Exhibit A notation on page 1; (3) has a varied degree of redaction of the Loan #; and (4) has uniquely different typeset than in Version 3 of the allegedly indorsed copy of the Note.

Dec. of Mr. Auxier

~ 7 ~

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Top of Pg. 1 – Showing NO barcode or handwritten notation and varied degree of redaction of loan #.

3605:  
M39

redacted 1174-048

**ADJUSTABLE RATE NOTE**  
(12-MTA Index - Payment and Rate Caps)

30133.11174

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES WILL HAVE LIMITS WHICH COULD RESULT IN THE PRINCIPAL AMOUNT I MUST REPAY BEING LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 115% OF THE ORIGINAL AMOUNT (OR \$ 342,700.00 ). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THIS NOTE OR ANY RIDER TO THIS NOTE. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

FEBRUARY 22, 2007      EVERETT      WASHINGTON

2525 CENTER RD. EVERETT, WA 98204

Bottom of Page 1.

CONFIDENTIAL

AUXIER001724


The signature block with faded stamp of indorsement and no highlights.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

redacted 1174

JOSEPH T SELLARS

Pay to the order of  
Without Recourse  
WASHINGTON MUTUAL BANK, PA

By   
CYNTHIA THRELK  
VICE PRESIDENT

Notice the UPPER case typeset of the letter "S" in Sellars on this 4<sup>th</sup> version of the Note produced in discovery

JOSEPH T SELLARS

Dec. of Mr. Auxier

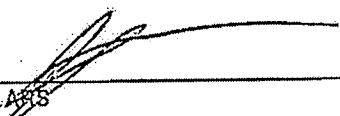
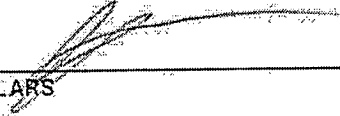
~ 8 ~

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Here are the two signature lines of the allegedly indorsed copies of the Note.

Here is the Ver. 3 Signature Line.	Here is the Ver. 4 Signature Line.
 JOSEPH T SELLARS	 JOSEPH T SELLARS

It is easy to see from the above information that there has been an alteration made to the typewritten last name of Mr. Sellars under the signature line of version 3 of the Note. That is also the first version of a copy of the Note on which a reputed indorsement of any kind appeared.

1.7. The Declaration of Karina Mirzoyan has now added an additional version of the Note, calling it a copy of the original note with what Ms. Mirzoyan apparently declares under oath is an original indorsement in blank without recourse. This copy was not produced during discovery although we do not know why. Plaintiff's request for production to JP MORGAN CHASE BANK, N.A. as servicer specifically requested production of any copies of the original note indorsed pursuant to the requirements of each of pooling and servicing agreements of the two trusts, -- i.e., with respect to the Washington Mutual Mortgage Pass-through Certificates WaMu Series 2007- OA4 Trust, and with respect to the Washington Mutual Mortgage Pass-Through Certificates MWALT Series 2007 OC1 Trust. No such documents were produced, although the three versions identified earlier as Exhibits A-2, A-3, and A-4 were produced.

Dec. of Mr. Auxier

~ 9 ~

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1.8. However, a careful inspection of the exhibit attached to the Declaration of Karina Mirzoyan shows a faded (not an original?) indorsement on that reputed "original" note. A true original indorsement on an original note would normally be clear, well defined, and very legible. The indorsement on the note attached to the Declaration of Karina Mirzoyan does not appear to be an original. It looks like a faded copy in which the name of the "signer" is difficult to read. In any event, according to the Declaration of Karina Mirzoyan the reputed "original" note was never delivered to either of the trusts or a custodian for either trust. With all due respect, the last place the original note probably should have been was continually in the possession of JP Morgan Chase Bank as a belated servicer, who was not involved as a servicer when either trust was established.

1.9. This pattern of multiple versions of the copy of the Note clearly shows that there are multiple versions of copies of the Note in question that have been created by someone in possession of a copy of the note after I, Josh Auxier, as Plaintiff's managing member, requested and received a copy of version 1 of the Note by fax from Washington Mutual Home Loans on October 15, 2009. How many copies of the Note have been created in total while in the possession and control of Defendants is impossible to know, although there are more than 4 parties who have claimed interests in the Sellers' Loan. The parties are: (1) Washington Mutual Bank, F.A.; (2) Washington Mutual Mortgage Securities Corp. (a necessary conduit through whom the pool of loans must pass to ultimately be deposited by another entity, namely, (3) WaMu Asset Acceptance Corporation, the only qualified depositor into either the ....OC1 Trust or the .... OA4 Trust; (4) LASALLE BANK N.A. as TRUSTEE (prior to the merger with B of A) for Washington Mutual Mortgage Pass-through Certificates

1 WaMu Series 2007- OC1 Trust; and (5) Bank of America, N.A., as Successor by Merger to  
 2 LASALLE BANK N.A. as TRUSTEE for Washington Mutual Mortgage Pass-through  
 3 Certificates WaMu Series 2007- OA4 Trust. The existence of multiple copies of the Note  
 4 does help to explain how and why there have been multiple parties making claims as reputed  
 5 Owner of or Holder of the note, and Beneficiary of the deed of trust that secures payment of  
 6 the note regarding the Sellars Loan. Defendants have presented nothing to show when the  
 7 purported indorsement was added to the copy of the Note or by whom. There has also been no  
 8 credible evidence presented by Defendants to attest to the validity of the reputed indorsement  
 9 or to show that these later differing copies which have been "indorsed in blank" are not just  
 10 copies cleverly created electronically upon request when needed for foreclosure or litigation  
 11 purposes.

12 **1.20.** On behalf of Plaintiff, I state that based on the information available to me, the only  
 13 credible unaltered copy of the promissory note dated February 22, 2007, signed by Joseph  
 14 Sellars that has been submitted as evidence is **Exhibit A-1**. Based on that document and the  
 15 date I received it on October 15, 2009, it does not appear that the unaltered original note has  
 16 been indorsed. Plaintiff disputes that any of the above described 4 differing copies of the  
 17 Note are valid or adequate to provide evidence adequate to deprive Plaintiff of its interests in  
 18 the subject real property relying upon the now discharged obligation which was originally  
 19 owed by Mr. Sellars to Washington Mutual Bank, FA. According to RCW 62A. 3-309 (b):

21 *"The court may not enter judgment in favor of the person seeking enforcement unless it*  
 22 *finds that the person required to pay the instrument is adequately protected against loss*  
 23 *that might occur by reason of a claim by another person to enforce the instrument"*

1 In this instant case there have already been multiple parties who have made claims and  
 2 collection attempts against the "*person required to pay the instrument*" (Mr. Sellars, who has  
 3 been relieved of his obligation by the discharge of his Ch. 7 Bankruptcy) through both  
 4 Washington Mutual Home Loans and now Defendant Chase Bank, as the alleged Servicers of  
 5 the subject note and also through Northwest Trustee Services Inc. and Quality Loan Services  
 6 Corporation as the different alleged Successor Trustees of the DoT on behalf of different  
 7 reputed beneficiaries. Subsequently due to the agreements between Mr. Sellars, Mr. Greene,  
 8 and Plaintiff upon Plaintiff's acquisition of its rights in the subject property and adjacent  
 9 parcel these multiple parties, such as, Defendant BofA... as Trustee of ...OC1 Trust and  
 10 BofA... as Trustee ...OA4 Trust and Defendant BofA's predecessor Lasalle Bank, by way of  
 11 parties who claim to be their agents, Defendant Chase Bank and Northwest Trustee Services  
 12 Inc. an agent of Defendant Chase Bank have also collected monies from Plaintiff. There is no  
 13 way to know just how many additional parties may bring claims in the future as the total  
 14 number of duplicated or altered versions of the Note is impossible to ascertain.

## 15 **II. PLAINTIFF'S CLAIMS.**

### 16 **2.1 Plaintiff's Acquisition of the Subject Property and adjacent Parcel.**

17 **2.1.1** On or about March 9 or 10, 2009, as I recall, I was asked by two persons whom  
 18 I knew, namely Heidi Velez-Brown and Bill Bolyard, if I, Josh Auxier, as the managing  
 19 member of Auxier Financial Group, LLC, would be interested in acquiring some real property  
 20 in the Everett area near Paine Field for redevelopment as a self-storage facility. Auxier  
 21 Financial Group, LLC, had been an existing entity since early 2007, through which I had done  
 22 business investing in real property, and recently had been studying the economic feasibility of  
 23  
 24

1 development of real property as self-storage facilities. This sounded like a reasonable business  
 2 opportunity. Ms Velez-Brown and Mr. Bolyard told me that the property was composed of  
 3 two parcels, one of which was unencumbered, and the other of which was encumbered by a  
 4 loan that was in default and nearing a non-judicial foreclosure sale, and that that the right to  
 5 reinstate the loan on the encumbered parcel would expire about March 19, 2009. I also was  
 6 told that neither parcel separately was large enough for redevelopment as a self-storage  
 7 facility; that the two properties would be and should be sold together, that they were separate  
 8 but interrelated transactions. We discussed the urgency of the timing, and that they had been  
 9 in contact with one of the owners named Joseph Sellars, and that the other co-owner was  
 10 named Greg Greene. I was told that both were experienced and knowledgeable persons in real  
 11 estate matters; and that Greg Greene was a licensed real estate broker. Therefore, insofar as I  
 12 understood, the sellers were knowledgeable and could be expected to read and understand any  
 13 documents.

14       **2.1.2** I agreed with Ms Heidi Velez-Brown and Mr. Bill Bolyard that I would register  
 15 the name "International Business Brokers & Affiliates" (sometimes recited as an acronym –  
 16 IBB&A) as a "doing business as" name of Auxier Financial Group, LLC.<sup>1</sup> I did that  
 17 registration on March 10, 2009. A copy of the receipt for that registration is attached hereto,  
 18 marked as **Exhibit B-1**, and incorporated herein by reference as if fully set forth here. On  
 19

20  
 21 <sup>1</sup> I also agreed with Ms. Velez-Brown and Mr. Bolyard to later form a new corporation to be  
 22 named International Business Brokers & Affiliates, Inc. The main activity and purpose of that  
 23 corporation was to pursue some development of apartments in King County. The ventures  
 24 were unsuccessful, and the corporation has gone out of business. There was discussion of the  
 possibility that if the development permits on property purchased from Mr. Sellars and Mr.  
 Greene in Snohomish County could be brought to the point where "entitlements" for the  
 developer had been obtained, then the corporation might consider buying the project.

1 March 21, 2009 I signed a HUD-1 Closing Statement on behalf of "Auxier Financial Group,  
 2 LLC d/b/a IBB&A" (using the Acronym) in which the sellers for the respective parcels of real  
 3 property were listed as "Land Barons LLC d/b/a LB Enterprises, and Joe Sellars and Greg  
 4 Greene, Owners." A copy of that HUD-1 Closing Statement is attached hereto, marked  
 5 **Exhibit B-2**, and incorporated herein by reference as if fully set forth here. Based on my  
 6 knowledge of escrow closings of real property sales, I reasonably believe that "Land Barons  
 7 LLC d/b/a LB Enterprises, and Joe Sellers and Greg Greene, Owners," signed a HUD-1  
 8 closing statement on behalf of the sellers for the same transactions covered by the HUD-1  
 9 Closing Statements. In addition, I authorized and paid \$17,020.71 for the full reinstatement of  
 10 the Joseph Sellars Loan # ....1174, payable in a cashier's check issued out of escrow to  
 11 Northwest Trustee Services. A copy of that payment and a receipt for it is attached hereto,  
 12 marked **Exhibit B-3**, and incorporated herein by reference as if fully set forth here. I also  
 13 authorized the payment of and paid the sales price for the adjacent vacant parcel of land that  
 14 was part of the two interrelated transactions, and in return received the Statutory Warranty  
 15 Deed (SWD) signed by the sellers on March 22, 2009, who were Land Barons LLC d/b/a LB  
 16 Enterprises, signed by Joseph T. Sellars and Greg Greene, which SWD was recorded under  
 17 Snohomish County Recording No. 200903230350. That statutory warranty deed expressly  
 18 conveys and warrants title to "Auxier Financial Group LLC d/b/a International Business  
 19 Brokers & Affiliates." Thus by the closing pursuant to the HUD-1 Statement, and the signing  
 20 of the statutory warranty deed the sellers were advised in writing exactly who the buyer was,  
 21 and the effect of the deed. If they failed for some reason to understand that, it made no  
 22 difference in the rights that were conveyed in the statutory warranty deed or later evidenced in  
 23 the later Memorandum of Contract which Mr. Sellars and Mr. Green signed on April 14, 2009.

24 Dec. of Mr. Auxier

~ 14 ~

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1 A copy of that Memorandum of Contract is attached hereto, marked **Exhibit B-4**, and  
2 incorporated herein by reference as if fully set forth here. The first sheet of **Exhibit B-4** is the  
3 face recording sheet for use by the Snohomish County Recorder's Office. The actual  
4 Memorandum of Contract appears as pages 2 and 3 of **Exhibit B-4**.

5       **2.1.3.** The downturn in the economy, coupled with problems related to questions as  
6 to who held owned or held the note, and who was the true beneficiary caused me to the  
7 approach the sellers, Joe Sellars and Greg Greene, with respect to the need to renegotiate some  
8 of the terms of the agreement, related to the encumbered property at 2525 Center Road in  
9 Everett, WA 98204. The document that was signed was attached as Exhibit E to the  
10 Declaration of Greg Greene. There were 8 items agreed upon. That document in turn refers in  
11 part to the prior purchase and sale agreement which was attached to the Declaration of Greg  
12 Greene as Exhibit C, to the extent that any provision of that Purchase and Sale Agreement  
13 related to 2525 Center Road, Everett, WA 98204 was intended to survive the original closing  
14 date of March 27, 2009. For example, the original closing date is stated on page 1 of Exhibit  
15 C, item 12. That date had come and gone and the \$17,020.71 to reinstate the Sellars Loan had  
16 been paid. However, Item 6 on page one of purchase and sale agreement, i.e., the purchase  
17 price for the property at 2525 Center Rd, Everett WA 98024 had been left open because at the  
18 time no one knew whether the lender would cooperate with a reinstatement or not. It was now  
19 agreed in this Amendment, as item 1 that the purchase price would be determined based on the  
20 result of any final discount off of the loan amount and/or any workout of the encumbrances or  
21 liens on the property. In addition, items 2, 3, 5, and 8 are related to buyer agreeing to cover  
22 expenses of a short sale, modification, discount, or other workout deemed appropriate to the  
23  
24

Dec. of Mr. Auxier

1 buyer to obtain a reconveyance adequate for seller to convey title to the buyer. The other most  
 2 significant provision was item # 4, which expressly provided that "Item # 3 on Form 34 of  
 3 Purchase and Sale Agreement is hereby deleted." Form 34 is a standardized  
 4 "Addendum/Amendment to Purchase and Sale Agreement;" and its Item # 3 read "Buyer  
 5 agrees to remain current on existing loan until completely satisfied." In short, what that Item  
 6 # 4 did was relieve the Buyer from Item # 3 in Form 34, in exchange for the buyer agreeing to  
 7 pick up and pay expenses pursuant to items 2, 3, 5, and 8 of the Amendment to Purchase and  
 8 Sale Agreement. In addition, Auxier Financial Group LLC d/b/a IBB&A agreed to actually  
 9 engage the services of a third party to assist with facilitation of a workout. That brings my  
 10 discussion to the next subject – engagement of someone to help facilitate a workout.

## 11 **2.2 Plaintiff's engagement of Lawful Forensic Foreclosures**

12  
 13 **2.2.1** On March 12<sup>th</sup>, 2010 I, acting on behalf of Plaintiff, engaged the services of  
 14 Lawful Forensic Foreclosures a workout and Negotiation Company by initiating a \$1,200  
 15 interbank transfer. This is shown on the excerpt from Plaintiff's bank statement from March of  
 16 2010 below:

17  
 18 
 The image shows a horizontal line representing a bank statement entry. On the left, the date '3/12' is printed. In the center, the text 'Transfer to DDA #' is followed by a blacked-out redaction box. On the right, the amount '1,200.00' is printed, followed by another blacked-out redaction box.

19 I, Josh Auxier, hereby attest that the above excerpt is from Plaintiff's business bank account  
 20 statement for the time period from March 1, 2010 to March 31, 2010 and that the transaction  
 21 shown above was initiated by Plaintiff's Managing Member, Josh Auxier, to engage the  
 22 services of Lawful Forensic Foreclosures.

23  
 24 Dec. of Mr. Auxier



1  
2  
3 **2.3 Plaintiff's Payments made to Washington Mutual Home Loans and Defendant Chase Bank**

4       **2.3.1** I on behalf of Plaintiff doing business as IBB&A personally phoned several  
5 times after the acquisition of Plaintiff's rights in the subject property both Washington Mutual  
6 Home Mortgage and Chase Bank and made monthly payments towards the Sellars Loan  
7 totaling in excess of \$14,000.

8 **2.4 Plaintiff's Improvements to the Property**

9  
10       **2.4.1** I on behalf of Plaintiff doing business as IBB&A made arrangements to  
11 improve the property by upgrading the heating, replacing the appliances (twice), obtaining  
12 updated approvals from Snohomish County for the planned improvements, planning the  
13 upgraded electrical, maintaining the property since Plaintiff's acquisition, managing the  
14 tenants in the property since Plaintiff's acquisition.

15 **2.5 Plaintiff's time, and effort put forth to further the planned development of the property**

16  
17       **2.5.1** I on behalf of Plaintiff doing business as IBB&A developed a pro-forma,  
18 business plan, and retained 3rd parties to assist with the planned development of the property  
19 into a Mini-Storage facility. The time associated with this work was in excess of 500 working  
20 hours prior to the filing of the action.

21 **2.6 Plaintiff's dba International Business Broker & Affiliates.**

22       **2.6.1** At the time of the negotiations and execution of the purchase agreements for the  
23 main and adjacent parcel (subject property) the only International Business Brokers &  
24

1 Affiliates in existence in WA state was the DBA established by me, personally, via the  
 2 Washington State Department of Licensing Website on March 10, 2009.

### 3 **2.7 Status of Purchase Agreement and Deed of Main Parcel**

4  
 5 **2.7.1** The Purchase Agreements between Plaintiff, Mr. Sellars, and Mr. Greene have  
 6 been satisfied. Plaintiff has paid to Mr. Sellars and Mr. Greene all amounts owing to them  
 7 including the \$31,000 defined on the Purchase Price line of the Adjacent Parcel Purchase  
 8 Agreement (1 of the 2 Purchase Agreements that constitute the Combined and Amended  
 9 Purchase Agreements), plus the reinstatement of the Sellars loan, plus the engagement of a  
 10 third party to assist with a workout of the Sellars loan. Mr. Sellars and Mr. Greene have never  
 11 claimed any additional monies are owed to them, nor have they pursued any action against  
 12 Plaintiff disputing Plaintiff's rights or interest in the subject property. Mr. Sellars and Mr.  
 13 Greene owe a Deed to Plaintiff as all terms to the agreements have been satisfied. Both Mr.  
 14 Sellars and Mr. Greene have refused to provide it until the Deed of Trust that is subject of the  
 15 lawsuit is reconveyed or otherwise quieted. As Plaintiff is already involved in this existing  
 16 suit and as Mr. Sellars & Mr. Greene are not bringing any action against Plaintiff nor are they  
 17 currently interfering with Plaintiff's possession of the property, Plaintiff has not brought any  
 18 action against Mr. Sellars or Mr. Greene, although it appears that may be necessary in the  
 19 future.

### 20 **2.8 Plaintiff and Escrow made NWTs and Chase aware that the curing of the 1st** 21 **foreclosure was part of an acquisition of the property by a 3rd party, the Plaintiff.**

22 Washington Mutual Home Loans (Chase's alleged predecessor) and Northwest Trustee  
 23 Services Inc. were informed by both myself and 1<sup>st</sup> Choice Escrow, represented by Cherie

Goldsmith, at and around the time of the curing of the first foreclosure that the funds used were part of a 3<sup>rd</sup> party transaction where Plaintiff was acquiring an interest in the property. When further researching the matters on the evening of Dec. 12<sup>th</sup>, 2011 @ 6:21pm I again contacted, Cherie Goldsmith to verify this fact. Cherie confirmed directly to me that during the closing of the transaction it was not only normal business practices but her duty as an escrow agent to fully disclose to all parties the circumstances surrounding the payment of the funds. In addition, Plaintiff was also identified as a Purchaser of the subject property on more than one occasion when I called Washington Mutual Home Loans seeking to make the monthly payments, verify WaMu/Chase's receipt of the authorization, and obtain a copy of the Note. This occurred more than once between the months of April thru October 2009. These calls started with my initial contact with Washington Mutual Home Loans when I faxed to the Washington Mutual Home Loans the authorization for release of information about the Sellars loan, executed by Mr. Sellars. This authorization was received, accepted, and noted on the account by Washington Mutual Home Loans on April 30<sup>th</sup>, 2009 as shown on the screen shot of the MSP LOAN MASTER MAINT. & DISPLAY produced in a document identified as AUXIER000368 by Defendants in response to Plaintiff's Request for Production:

```

--IMD:N----- * ADDITIONAL MESSAGES * -----WU: P-----
PRESS PF14 FOR MEMOS
LIFE-OF-LOAN: DLQ1
--COM2----- * COMMENTS * -----
DATE  USR          CONTACT RESPONSE REASON RECALL      F/B  REMIND
                                         MMDD10
043009  IAS  KRCVD 3RD PTY AUTH 4M BDRR AUTH AGENTS AT AUXIER  >
          KFINANCIAL GROUP LLC/INTERNATIONAL BUSINESS BROKERS  >
          K8 AFFILIATES,2 RELS INFO REQD ALL 3RD PTY NEGD.    >

```

As I had previously noted with many lenders in short sale negotiations, as a Real Estate Broker and Investor, getting any follow-thru or results with the call-center employees representing

Dec. of Mr. Auxier

~ 19 ~

**MUELLER & ASSOCIATES, INC., P.S.**

ATTORNEYS AT LAW  
2050 - 112th Avenue N.E. Suite 110  
Bellevue, Washington 98004  
Ph. (425) 457-7600; FAX (425) 457-7601

1 mortgage servicers is an extremely time-consuming and tedious task, as the representatives very  
 2 rarely note the account with the occurrence or content of a call, and fail to follow through on  
 3 anything they commit to doing. This explains the 7 months duration between my first call in April  
 4 '09 and my receipt of a copy of the Original Note in October '09. During several of the calls the  
 5 representatives' response to my request was that they did not have a copy of the note to send me.

6 **2.9 Payments made to Defendant Chase and its Predecessor Washington Mutual Home**  
 7 **Loans.**

8 After Plaintiff acquired its interest in the subject property and adjacent parcel I personally  
 9 phoned both Washington Mutual Home Loans and Defendant Chase, on behalf of Plaintiff, during  
 10 these calls I authorized both above entities to initiate Electronic Funds Transfer payments from  
 11 Plaintiff business checking account. Sometimes these calls were via a live representative when I  
 12 would also follow-up on the authorization I had faxed as commonly it had been misplaced, not  
 13 received, and then after the representative would take the time to review the notes they would find  
 14 it. I also followed up on my ongoing request for a copy of the Sellars' Note, a few of these call  
 15 were also via an automated system.

16 /s/ Josh Auxier  
 17 17837 1st Ave S #169  
 18 Normandy Park, WA 98148  
 19  
 20 206-551-1786

21  
 22  
 23  
 24 Dec. of Mr. Auxier

**CERTIFICATE OF SERVICE.**

I hereby certify that on December 28, 2011, at prior to 3:00 am, after having difficulties with my computer system, I caused a copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send e-mail notification of such filing to the following participants:

Legal counsel for Defendants JP Morgan Chase Bank N.A.  
and Bank of America, N.A.:

Fred B. Burnside, WSBA # 32491  
Matthew Sullivan WSBA # 40873  
of Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
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e-mail: [matthewsullivan@dwt.com](mailto:matthewsullivan@dwt.com)

Dated December 28, 2011.

/s/ Edward L. Mueller  
Edward L. Mueller, WSBA # 264